

General Information Letter: Income subject to Illinois Income Tax.

May 19, 1998

Dear:

This is in response to your letter dated May 11, 1998, in which you request answers to several questions you have about the Illinois Income Tax Act ("IITA"). In your request you stated:

I am writing for the purpose of obtaining an answer to a few questions, for the purpose of accurately determining my Illinois Income Tax liability.

Pursuant to 35 ILCS 5/201, the type of tax imposed (Illinois Income Tax) is defined as follows:

5/201. Tax Imposed

(a) In general. "A tax measured by net income is hereby imposed on ever individual, corporation, trust and estate for each taxable year ending after July 31, 1969 on the privilege of earning or receiving income in or as a resident of this State. Such tax shall be in addition to all other occupation or privilege taxes imposed by this State or by any municipal corporation or political subdivision thereof."

(emphasis added)

Question: Please tell me what types of activities qualify as "privileges."

Question: If I am receiving "compensation for labor" while laboring in an unregulated occupation of common right (a Right, per U.S. Supreme Court ruling), what "privilege" am I enjoying? When considering your answer, please note that I am not a government employee, am not a corporate officer under a duty to withhold, and am not serving within the armed forces of the United States.

Question: Please tell me, specifically, what definition of the term "income" the Illinois Department of Revenue and/or the Internal Revenue Service rely upon or use in determining what qualifies as such.

Question: Please tell me whether receiving "compensation for labor" is taxable under 35 ILCS 5/201. Note that I am not asking about "compensation foe services" or "compensation for personal services," but rather "compensation for labor." (Please see Oliver v. Halstead, 86 S.E.2d 858)

Question: Please tell me, specifically, the definition of "this State," and what areas within the exterior limits of Illinois it applies to (and as it applies in 35 ILCS 5/201). Does "this State"

include the de jure county lands within the exterior limits of Illinois, or does it include only the territorial "State" of Illinois which was actually ceded to the Federal Government?

Please be advised that previous correspondence received from your office (legal department), in response to a previous inquiry made by me, was later found to contain erroneous information. This type of error may be considered minor to some. To this Citizen, however, it represents a blatant attempt to deceive and defraud. Please take whatever steps are necessary to prevent such questionable actions in the future. I expect all answers to be lawful, factual and specific, and not based upon "past practice," or assumptions.

Thank you for your time and assistance in this matter. As always, my primary concern is complying with the law.

Department Analysis

Before answering your questions, I will address your concern that past letters contained incorrect information and that the Department was trying to deceive you. While reviewing Mr. Caselton's letters to yourself dated January 27, 1998 and February 26, 1998 no errors were found in the legal information provided. In addition, I can assure you that no one at the Department is attempting to deceive or defraud yourself. Having stated this, and based upon your last several letters to the Department, I must warn you that there are people who have posted mistaken and/or false information about the Illinois or Federal tax systems on the Internet, and occasionally in newsletters or at seminars.

As regards your questions in the May 11, 1998 letter, I will address these in the order you listed them. Your first question asks what types of activities qualify as "privileges." Many things are privileges under the law. For example, use of the public highways is a privilege. In the Illinois tax system, as you found in 35 ILCS 5/201 earning income in Illinois is a privilege. As such Illinois may tax that income. By the way, the basis for the Illinois tax system is the Illinois Constitution Article IX which states in pertinent part:

Revenue

Section 1. STATE REVENUE POWER

The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.

Section 2. NON-PROPERTY TAXES-CLASSIFICATION, EXEMPTIONS, DEDUCTIONS, ALLOWANCES AND CREDITS

In any law classifying the subjects or objects of non-property taxes or fees, the classes shall be reasonable and the subjects and objects within each class shall be taxed uniformly. Exemptions, deductions, credits, refunds and other allowances shall be reasonable.

Section 3. LIMITATIONS ON INCOME TAXATION

(a) A tax on or measured by income shall be at a non-graduated rate. At any one time there may be no more than one such tax imposed by the State for State purposes on individuals and one such tax so imposed on corporations. In any such tax imposed upon corporations the rate shall not exceed the rate imposed in individuals by more than a ratio of 8 to 5.

(b) Laws imposing taxes on or measured by income may adopt by reference provisions of the laws and regulations of the United States, as they then exist or thereafter may be changed, for the purpose of arriving at the amount of income upon which the tax is imposed.

This is the sole authority necessary for Illinois to tax income, no reliance on federal law is needed, or appropriate. As you will notice, however, section 3(b) does allow the use of laws or regulations of the United States if desired (but not required).

Your second question regarding what privilege you would be enjoying if you were receiving compensation for labor in an "unregulated occupation" is again the privilege of earning income in Illinois. Income from labor is still income and thus is taxable. Your status as a government employee or a corporate officer is immaterial.

The third question you ask is what definition of the term income the Department uses.

Sec. 203. Base Income Defined.

(a) Individuals.

(1) In general. In the case of an individual, base income means an amount equal to the taxpayer's adjusted gross income for the taxable year as modified by paragraph (2).

Section 203 then explains that several modifications are then made to this figure by the use of additions to adjusted gross income and subtractions to adjusted gross income. The term adjusted gross income comes from the Internal Revenue Code §§61-62 which define gross income and adjusted gross income respectively (copy enclosed). Labor is the same as services which is specifically listed as a source of income. You will further note that even if labor were not considered the same as services, §61 specifically states that "gross income means all income from whatever source derived, including (but not limited to) the following items..." 26 USC §61(a). Thus, income generated from whatever source is taxable.

Your fourth question concerns whether compensation for labor is taxable under the IITA. As stated above it is taxable. In addition, while reading *Oliver v. Halstead*, I think I may have found where some of your confusion comes from. *Oliver*, like *Eisner v. Mitchell* and *Doyle v. Mitchell Brothers* (cases cited in your past letters) concern aspects of taxation relating to corporations, and gain derived from capital. The mechanics of taxing gain from capital are different from taxing income (not gain or profit) received from performing labor or services.

Nevertheless, even the court in *Oliver* stated, "compensation from labor is not profit." *Oliver*, 86 S.E.2d 859. The court in *Oliver* went further to say that

"[t]here is a clear distinction between `profit' and `wages' or compensation for labor." Id. The court then quotes *League Association of America v. The People ex rel. Thomas B. Needles, Auditor*, 90 Ill. 166-- an Illinois Supreme Court Case--which held that "[c]ompensation for labor can not be regarded as profit within the meaning of the law. The word `profit', as ordinarily used, means the gain made upon any business or investment -- a different thing altogether from mere compensation for labor." Compensation for labor is synonymous with compensation for services. See *Black's Law Dictionary*, 5th Edition which states "Labor. Work; toil; service; mental or physical exertion. Term normally refers to work for wages as opposed to work for profits..." Accordingly, compensation for labor is taxable under 35 ILCS 5/201.

Your final question relates to the definition of "this State", and what areas of Illinois it applies to. This is somewhat confusing as the term "State" means Illinois. I see from your earlier letters that you claim there is an "Illinois Republic" which contains the "Dejure county lands" and some sort of federal state, which you claim is noted by use of a capital "S" in "state" and includes areas which were somehow ceded to the federal government, possibly by the Fourteenth Amendment. This is incorrect. There is only one Illinois, and it is was formed out of the Northwest Territory. Please note that Illinois was formed by the Federal government which also established the system of counties for all of the states eventually formed out of the Northwest territory. No Illinois "State" or "state" or Republic ever existed prior to this, nor could one have since the United States purchased the land directly from France. Hence, the term state is capitalized when it is grammatically correct to do so and not when a separate entity is being spoken of.

In your January 12, 1998 letter you quote *Hale v. Henkel*, 201 U.S. 43, 26 S.Ct 370 (1906) for the proposition that different rights depend on whether an individual is a citizen of a "State" or "state". However, upon reading the *Hale* case the quote given is incomplete. For one, the quote does not adhere to the capitalization scheme whereby capital "S" is used when referring to the federal "State of Illinois" and lower case "s" is used to describe the "de jure county state" . *Hale* consistently uses a lower case "s" and a lower case "c" when speaking of the state and the citizen. Secondly, the quote asserts that a person may stand upon his right as a United States citizen to refuse an unwarranted search of his house when confronted by state authorities (lower case s). As such, the quote proves that there are two concurrent jurisdictions in a state. The federal jurisdiction and the state jurisdiction. They do not exist in exclusive portions of state lands (i.e. de jure county lands and a federally ceded State). *Hale*, 26 S.Ct at 379 (a copy of the full quote is enclosed). It appears you have been misinformed and Mr. Caselton's information was correct.

I hope that this has been helpful to you. If you have additional questions please feel free to contact the Department at the above address.

Sincerely,

Charles Matoesian
Associate Attorney (Income Tax)